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Increase of the membership of the Commission

Note by the Secretariat

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I. Introduction

1. At its fifty-fifth session in 2000, the General Assembly requested the Secretary-General to submit a report on the implications of increasing the membership of the Commission and invited States to submit their views on this issue.[1] By note verbale of 25 January 2001, the Secretary-General requested States to submit their views by 15 March 2001. So far, comments from twenty-two States have been received. The purpose of the present note is to provide relevant information with a view to assisting the Commission in formulating an opinion or recommendation for the General Assembly. After the Commission's session, the Secretary-General will submit to the General Assembly a report in line with the above-mentioned request.

II. Increase of the membership of the Commission and of other relevant organs

2. When established in 1966, the Commission had twenty-nine member States.[2] That number

was determined with a view to ensuring that the Commission would be small enough to be efficient but large enough to be representative of the principal economic and legal systems, as well as of the developing and the developed world.[3] In order to ensure equitable representation, seats were distributed as follows: eight to Western European and other States; seven to African States; five each to Asian and Latin American States; and four to Eastern European States.[4]

3. In 1973, the General Assembly considered the question of increasing the membership of the Commission. At that time, the General Assembly confirmed the principle of adequate representation of the various legal and economic systems and of the developing and the developed world, as well as the principle of equitable geographical distribution of seats. After discussion in the Sixth Committee,[5] the General Assembly decided to increase the number of members to thirty-six. The seven additional seats were distributed as follows: two each to African and Asian States; and one each to Eastern European, Latin American States and Western European and other States.[6] As a result, the current distribution of seats in the Commission is as follows: nine each to African and Western European and Other States (9/36, i.e. 25%); seven to Asian States (7/36, i.e. 19.4%); six to Latin American States (6/36, i.e. 16,6%); and five to Eastern European States (5/36, i.e. 13,8%).

4. At its twentieth session in 1987, the Commission decided to reconsider the matter and requested the Secretariat to prepare a report.[7] The report was before the Commission at its twenty-first session in 1988 (A/CN.9/299).[8] The report recalled the decisions of the General Assembly with respect to the original membership in 1966 and the increased membership in 1973. Taking into account that, since 1977,[9] all States that were not members of the Commission were invited to participate in sessions of the Commission and its working groups as observers on an equal footing with members, the note described the issue of the increase of the membership of the Commission as follows: "... the primary consequence of membership in the Commission may be that a member State will be more likely than a non-member State to be represented at meetings of the Commission and its working groups. ... Membership may affect both the ministry officials charged with substantive responsibility for international trade law and the financial authorities. In the former case membership may stimulate interest in the subject and better justify the expenditure of human resources to prepare for and to attend meetings. In the latter case membership may better justify the spending of the necessary funds." (A/CN.9/299, para. 11).

5. The note confirmed that "change in the number of member States would have no financial implications for the United Nations" and went on to discuss the historical development of the size of working groups and the advantages that the increase in the size of working groups had. The main advantages cited were that broad participation increased the likelihood that a text would be properly balanced and acceptable to States (A/CN.9/299, para. 26).

6. In the discussion of the note by the Commission, divergent views were expressed. One view was that the membership should be increased substantially. In support, it was stated that such an increase of the membership would enhance awareness of the work of the Commission and interest in its achievements. It was also observed that such an increase would further the objectives of the Commission, since member States tended to take a favourable attitude towards acceptance of legal texts emanating from the work of the Commission. It was also pointed out that an increase of the membership could have a beneficial impact on participation since States were more likely to be represented at sessions of the Commission as members than as observers. Moreover, it was observed that "the large number of States that had participated as observers and had made valuable contributions indicated that there existed a considerable interest beyond the thirty-six States that were currently members ... The proponents of the increase in membership of the Commission did not propose any definite number since it was for the General Assembly to agree on an equitable and politically acceptable number". Another view was that it was not advisable for the Commission to recommend an increase of its membership. The valuable participation and contributions of non-member States had shown that States with an interest in the work of the Commission had full opportunity for active involvement and appeared to have used that opportunity. The remaining difference between a member State and a non-member State was the domestic question of the likelihood of its being represented at sessions. Moreover, it had not

been established that the desire or need for an increase was felt in all regional groups alike and whether an increase would in fact increase active participation by States ... Finally, it was felt that it was inopportune to recommend an increase of the membership at a time when the Organization was undergoing a process of review about a possible restructuring.[10] After deliberation, the Commission decided to defer its decision until 1990. However, in 1990, the Commission decided to further postpone consideration of the matter.[11] At its fifty-fifth session in 2000, the General Assembly declared its intention to consider the matter again at its fifty-sixth session in 2001 (see para. 1 above).

7. The membership of the International Law Commission ("ILC") has been increased three times so far. In 1956, from fifteen to twenty-one members, in 1961, from twenty-one to twenty-five members and, in 1981, from twenty-five to the present thirty-four members. Reasons cited for those increases of the membership of the ILC include: "securing in the Commission an adequate representation of the main forms of civilization and of the principal legal systems of the world"[12]; and the substantial increase in the membership of the United Nations.[13]

8. The Committee on the Peaceful Uses of Outer Space ("COPUOS") was established in 1958 with eighteen members. In 1959, when the Committee became a permanent body of the General Assembly, it had twenty-four member States. The membership of the Committee was last increased in 1994 from fifty-three to sixty-one members.[14] Reasons cited for that increase included the need to take into account the significant increase in the membership of the United Nations, the importance of the subjects under consideration and the actual extent of participation in the Committee".[15] From the additional eight seats, at the suggestion of COPUOS, the General Assembly gave two each to the four regional groups that had indicated an interest.[16] At its next session in June 2001, COPUOS will consider a further increase of its membership.[17]

III. Implications

9. All States are invited to attend the meetings of the Commission and its working groups. Documents relating to the work of the Commission and its working groups are issued for and distributed to all States. Statistically, an average of fifty to sixty-five States attend the meetings of the Commission and its working groups and, as a matter of time-honoured practice, all States are invited to participate in the discussion and decision process which is based on the principle of consensus.

10. In view of "the relatively low incidence of expert representation from developing countries at sessions of the Commission and particularly of its working groups during recent years, owing in part to inadequate resources to finance the travel of such experts",[18] a Trust Fund was established for providing travel assistance to developing countries that are members of the Commission. At its forty-eighth session in 1993, the General Assembly welcomed "the completion of the setting up of the trust fund for the United Nations Commission on International Trade Law to grant travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General. It also appealed "to Governments, the relevant United Nations organs, organizations, institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the trust fund".[19] This appeal is repeated every year in the General Assembly resolution on the annual report of the Commission. However, contributions to the Trust Fund are very limited and, as a result, little assistance is provided to developing countries. Increase of the Commission's membership in itself would not result in any change in this respect, at least, to the extent that contributions to the Trust Fund are voluntary.

11. According to the Finance and Budget Section of the Division of Administrative and Common Services of the United Nations Office at Vienna, as far as servicing of conferences is concerned, there is little impact of an increase in membership to quantify. No impact is foreseen in interpretation, translation of pre- and after-session documents, and meetings servicing as cost

of these services is fixed irrespective of the numbers of members. As to in-session document reproduction, the impact is not expected to be material enough to be presented as a financial implication. There are no financial implications on the work of the secretariat of the Commission.

IV. Brief summary of comments by States

12. The Secretariat has received so far comments from twenty-two States (eight from the Asian Group, six from the Latin American Group, three from the Eastern European Group, two from the African Group and three from the Western European and Other States Group). All twenty-two States support an increase in the membership of the Commission. Reasons cited include: the need to align the membership of the Commission with the increased membership of the Organization, so as to preserve the representative character of the Commission; the need to allow States that cannot justify the cost of participating in the work of the Commission, unless they are members, to participate; and the need to enhance the work of the Commission and to promote the acceptability of the work of the Commission by broadening the spectrum of representation.

13. At the size of the increase, several suggestions were made, ranging from fifty to, at least, sixty seats. In this regard, all States are mindful of the need to preserve the efficiency of the Commission. As to the allocation of the additional seats, several suggestions were also made. In their comments, some States emphasized that consideration should be given to establishing an effective mechanism for providing financial assistance to developing countries that are members of the Commission with respect to the travel costs required for them to attend meetings of the Commission and its working groups.

V. Conclusion

14. The Commission may wish to formulate a recommendation to the General Assembly as to whether the Commission's membership should be increased and, if so, what should be the size of the increase.[20] The recommendation may also deal with other matters to be addressed in the relevant General Assembly resolution (for a list such matters, see note 2 below). Such issues include how the seats should be allocated among the various geographic groups of States and the term of the new members in order to preserve the pattern of electing half the membership every three years. This recommendation could give the necessary guidance to the drafters of the relevant draft resolution and thus assist the Sixth Committee in its deliberations. It could also serve as a notice to member States of each geographic group to conduct informal consultations so as to be prepared to submit concrete suggestions to the Sixth Committee in the fall of 2001. Such a notice may be particularly useful if States wish the new member States to be elected by the General Assembly at its fifty-sixth session in 2001.

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[1] See operative paragraph 13 of resolution 55/151 of 12 December 2000.

[2] Fourteen members were elected for a period of three years and fifteen members were elected for a period of six years. The selection of the members elected within each of the five group of States that would serve for three or six years was made by the President of the General Assembly by drawing lots. In subsequent elections, all members were to be elected for a period of six years (see operative paras. 1 to 3 of General Assembly resolution 2205 (XXI) of 17 December 1966). By resolution 31/99 of 15 December 1976, the General Assembly decided that membership would expire on the last day prior to the opening of the seventh annual session of the Commission following the date of election.

[3] *Official Records of the General Assembly, Twenty-first Session*, A/6954, para. 26 (Report of the Sixth Committee on agenda item 88; UNCITRAL Yearbook, vol. I: 1968-1970) and A/6396, *paras. 225-229* (not reproduced in UNCITRAL Yearbook).

[8] Ibid., A/6954, paras. 28-29.

[9] *Official Records of the General Assembly, Twenty-eighth Session*, Annexes, agenda item 92, A/9408 (Report of the Sixth Committee; UNCITRAL Yearbook, vol. V: 1974).

[10] See para. 8 of resolution 3108 (XXVIII) of 12 December 1973 (UNCITRAL Yearbook, vol. V: 1974).

[11] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17* (A/42/17), para. 344 (UNCITRAL Yearbook, vol. XVIII: 1987).

[12] UNCITRAL Yearbook, vol. XIX: 1988.

[13] See A/31/17, para. 74 (UNCITRAL Yearbook, vol. VII: 1976) and resolution 31/99, para. 10 (b) of 15 December 1976; see also para. 7 (c) of resolution 38/134 of 19 December 1983. (UNCITRAL Yearbook, vol. XIV: 1983).

[14] Ibid., A/43/17, paras. 112-115.

[15] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 17* (A/42/17), para. 65 (UNCITRAL Yearbook, vol. XVIII: 1987).

[16] General Assembly resolution 1103 (XI) of 18 December 1956.

[17] General Assembly resolutions 1647 (XVI) of 6 November 1961 and 36/39 of 18 November 1981.

[18] General Assembly resolution 49/33 of 9 December 1994.

[19] Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33* (A/49/33), paras. 47 and 48.

[20] General Assembly resolution 49/33 and *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 20* (A/49/20), para. 156.

[21] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 33* (A/55/20), paras. 179-191; General Assembly resolution 55/122 of 8 December 2000 and A/CC.105/L.230/ Informal consultations on the enlargement of COPUOS.

[22] Report of the Sixth Committee, A/49/739, of 1 December 1994 on the Report of the United Nations Commission on International Trade Law on the work of its twenty-seventh session (UNCITRAL Yearbook, vol. XXV: 1994).

[23] See paras. 5 and 7 of resolution 48/32 of 9 December 1993.

[24] If the Commission wishes to preserve exactly the current percentage of participation in the Commission of the various geographic groups, the membership would have to be doubled and each group would have to be allocated as many seats as it currently has (see para. 3 above). If, however, a lower membership, such as sixty, were to be preferable, maintaining the current proportions would require minor adjustments: the 25 % that the African and the Western European and Other States currently have would result in exactly fifteen members for each group; the 19.4% that the Asian States currently have would mathematically result in 11.6 members; the 16.6% that the Latin American States currently have would result in ten members; and the 13.8% that the Eastern European States currently have would result in 8.3 members.